

STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS

COMMISSIONER OF EDUCATION

.....
Student S. Doe

v.

Woonsocket School Department
.....

INTERIM ORDER

The parent in this case has filed a request for a special education due process hearing to dispute the decision of the Woonsocket school district to graduate her 18 year old son and to award him a regular high school diploma. The student presently has an IEP. The parent in this case has requested the Commissioner of Education to issue a “stay-put” order to prevent Woonsocket from graduating her son at least until a regularly appointed special education hearing officer can hear and decide the issues presented in this case on the merits. We find on an interim basis that the parent in this case is entitled to a “stay-put order” prohibiting her son’s graduation with a regular diploma. All issues in this matter are remitted for de novo consideration by the due process hearing officer who will hear this matter. If Woonsocket has a policy of allowing students not yet eligible to receive a diploma to receive a blank diploma with their class at the forthcoming June Commencement we find that this practice should be extended to the student in this case.

DATE: June 1, 2012

Jurisdiction and Travel of the Case

The parent in this case has filed a request for a special education due process hearing to dispute the decision of the Woonsocket school district to graduate her 18 year old son and to award him a regular high school diploma. The student presently has an IEP.¹ Under special education law the receipt of a regular high school diploma terminates a student's eligibility to receive further special education services from the student's school district. The parent in this case has requested the Commissioner of Education to issue a "stay-put" order to prevent Woonsocket from graduating her son at least until a regularly appointed special education hearing officer can hear and decide the issues presented in this case on the merits. Jurisdiction is present under R.I.G.L.16-39-1, R.I.G.L. 16-39-2 and R.I.G.L. 16-39-3.2.

Positions of the Parties

The Parent

The parent contends that neither she nor her son "received any prior written notice advising [them] of the graduation/change in placement as required by Sections 300.102 (a)(1) (iii), 300.503 and 300.504 of the state regulations." The parent also contends that she and her son have not been given the required summary of the student's academic achievement level and functional performance level as required by Section 300.305 (e) (3) of the Board of Regents Regulations Governing the Education of Children with Disabilities. The parent further submits that her son is in need of the transitional services required by 300.320 (b) and that her son continues to need special education and related services.

The mother denies that her 18 year old son consented to graduation and the receipt of a regular diploma during an IEP meeting and she further submits that in any event she has now secured a very comprehensive guardianship over her son from a probate court and that she has now revoked any consent which may have been given and that she has now filed a request for a due process hearing. She therefore contends that she is entitled to a stay-put order prohibiting her son's graduation at least until a due process hearing can hear and decide this matter.

¹ Exhibit 1.

The School District

Woonsocket contends that the student in this case has completed all course work and portfolio requirements needed to qualify him for the award of a regular education diploma. The district contends that the student, who is of the age of majority, agreed to the proposed graduation at an IEP meeting and that there is no reason why the student should not receive a regular education diploma.

Conclusions of Law

1. Under state and federal laws and regulations a student remains eligible to receive special education until age 21 or until the student graduates with a regular high school diploma:

300.101 Free appropriate public education (FAPE)

(a) *General.* A free appropriate public education must be available to all eligible children residing in the LEA, between the ages of 3 and 21, inclusive (until the child's twenty first birthday or until the child receives a regular high school diploma...) (Emphasis added)

2. Under special education law graduation constitutes a change in placement that is subject to the "stay-put provisions" of state and federal law. 34 C.F.R. 300.102 (a) (3) (iii) The "stay-put" regulation states:

300.518 Child's status during proceedings.

(a) Except as provided in 300.533, [certain disciplinary matters not relevant to this case] during the pendency of any administrative or judicial proceeding regarding a due process complaint notice requesting a due process hearing under 300.507, unless the state or local agency and the parents of the child agree otherwise, the child involved in the complaint must remain in his or her current placement.

3. The Regulations of the Board of Regents provide at **300.30 (b) (2) Parent** that: “If a judicial decree or order identifies a specific person or persons ...to act as the “parent” of a child or to make educational decisions on behalf of the child, then such person or persons shall be determined to be the “parent” for purposes of this section.

4. Under 300.9 consent is “voluntary on the part of a parent and may be revoked at any time.” The same regulation also provides that: “If a parent revokes consent, that revocation is not retroactive (i.e., it does not negate an action that has occurred after the consent was given and before the consent was revoked).”

Findings of Fact

1. While the guardianship obtained in this matter does not specifically refer to education we find, on an interim basis, that it is plainly comprehensive enough to include educational decision making.² (In saying this we do not intend to prohibit a due process hearing officer from reaching a different conclusion).

2. This guardianship was granted before the student’s graduation could take place and the mother filed for a due process hearing before the graduation could take place. We find on an interim basis that the student’s mother also revoked any consent to graduation which may have been made by her son.

Conclusion

We find on an interim basis that the parent in this case is entitled to a “stay-put order” prohibiting her son’s graduation with a regular diploma. All issues in this matter are remitted for de novo consideration by the due process hearing officer who will hear this matter. If Woonsocket has a policy of allowing

² Exhibit 2.

students not yet eligible to receive a diploma to receive a blank diploma with their class at the forthcoming June Commencement we find that this practice should be extended to the student in this case.

Forrest L. Avila, Hearing Officer

Deborah A. Gist, Commissioner

June 1, 2012
Date
